

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN Filed/Received
06/27/2003 05:46:20 PM CDT

HYPERPHRASE TECHNOLOGIES, LLC and
HYPERPHRASE, INC.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 02-C-0647 C

Chief Judge Barbara B. Crabb
Magistrate Judge Stephen L. Crocker

**OPPOSITION OF MICROSOFT TO HYPERPHRASE'S MOTION TO
STRIKE MICROSOFT'S MOTION FOR SUMMARY JUDGMENT**

HyperPhrase's motion is without merit. Its effort to exploit a minor delay shows that HyperPhrase clearly wants to avoid addressing the merits of this case or narrowing any of the issues before an otherwise long, expensive jury trial. The drastic remedy that HyperPhrase seeks bears no sensible or reasonable relationship to HyperPhrase's complaint. HyperPhrase was properly served with the motion papers. The minor delay in filing the brief did not prejudice HyperPhrase in any way. Accordingly, HyperPhrase's motion to strike should be denied.

HyperPhrase's claim that it was improperly served is unfounded. In fact, HyperPhrase has received two copies of the summary judgment papers, as the notice of service indicated. Thus, HyperPhrase's real complaint is that Microsoft used the fastest, most efficient means of transmitting the documents to HyperPhrase. Shortly after electronically filing the summary judgment papers with the Court, Microsoft provided a courtesy copy of these same documents to HyperPhrase's counsel via email. Microsoft also served copies of the same papers on HyperPhrase by overnight delivery. As such, HyperPhrase received an electronic copy of the

summary judgment papers on June 26 and a paper copy on June 27.

HyperPhrase evidently had no problem reviewing the electronic copies that were emailed to it on June 26, because it served discovery requests based on the motion the very same day. Thus, HyperPhrase took full advantage of having quick and easy access to the documents electronically sent by Microsoft.

HyperPhrase seeks to avoid addressing the merits of this case by exploiting a minor delay in filing the motion for summary judgment. Microsoft filed its notice of motion and two supporting declarations four minutes after the midnight deadline. Due to the size of the remaining files and the process of converting them into electronic form, Microsoft filed its other documents electronically within the next hour and a quarter. This minor delay, particularly in the absence of any prejudice does not warrant striking the entire motion, which should dispose of the entire case.

Before filing this opposition, Microsoft requested that HyperPhrase withdraw its motion, offering HyperPhrase as an accommodation an additional day to prepare its opposition brief, that day to be taken out of Microsoft's reply time. HyperPhrase refused, claiming that Microsoft should have contacted it before filing the motion, and moved for an extension. This was clearly not feasible, given that Microsoft was already working hard to meet the midnight deadline. To the extent that the Court deems a formal extension of the deadline necessary, Microsoft hereby requests that the deadline for filing motions for summary judgment be extended by an hour and a quarter.

For the foregoing reasons, Microsoft requests that HyperPhrase's motion be denied.

Dated: June 27, 2003.

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CERTIFICATE OF SERVICE

I certify that on June 27, 2003 a true and an accurate copy of OPPOSITION OF MICROSOFT TO HYPERPHRASE'S MOTION TO STRIKE MICROSOFT'S MOTION FOR SUMMARY JUDGMENT was served on Plaintiffs' counsel as follows:

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